vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6466 OF 2005

Shri V.L. Satam ... Petitioner

V/s.

The Regional Director & anr. ... Respondents

Mr.N.G. Helekar for Petitioner
Mr.R.S. Pai for Respondents

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **OCTOBER 27, 2005**

P.C.:

. This petition challenges the award passed by the Industrial Tribunal whereby Industrial Tribunal has dismissed the Reference for non-prosecution. Mr.Helekar, appearing for the petitioner, rightly submits that when the Reference is made for adjudication under section 10 of the Industrial Disputes Act, the Labour Court or Tribunal is expected to make an award.

2. The term "award" as defined under section 2(a) of the Act means an interim or final determination of an industrial dispute. The industrial dispute which was referred is as follows:

> "Whether the action of the management of M/s.Indian Airlines Ltd. in dismissing Shri V.L. Satam from services of Airlines is justified and proper? If not to what relief is the Workman entitled?"

3. Therefore, the Tribunal ought to have decided this dispute. The Tribunal faced with the difficulty of only the pleadings on record, ought to have decided whether the Petitioner has made out a case based on the pleadings and whether the case of the petitioner could be allowed without any evidence on record. It was the duty of the Tribunal to either decide that the Petitioner was entitled to reinstatement or he was not. On the basis of just the pleadings, it could have arrived at a conclusion that the Petitioner had not proved his case and therefore dismissed the Reference. Instead the Tribunal adopted a short cut by stating that the Reference stands disposed off for non-prosecution.

4. In the case of *Jai Bhagwan v/s. Management of the Ambala Central Cooperative Bank Ltd. & Anr.*, **(1983) 4 SCC 611,** the Supreme Court was seized of a matter where the Tribunal had refused to adjudicate the dispute referred on the ground that there was an alternate remedy available to the workman. The Supreme Court has observed thus:

> 3. .... Nor are we able to understand how an Industrial Tribunal to whom a dispute has been referred for adjudication can refuse to adjudicate upon it and surrender jurisdiction which it undoubtedly has to some other authority. While the Government may exercise their discretion in deciding whether to refer or not to refer a dispute for adjudication, the Tribunal to whom the dispute has been referred has no discretion to decide whether to adjudicate or not. Once a reference has been properly made to an Industrial Tribunal, the dispute has to be duly resolved by the Industrial Tribunal. Resolution of the dispute cannot be avoided by the Tribunal on the ground that the workman had failed to pursue some other remedy.

5. In the case of *Management of the Pandavapura Sahakara Sakkare Karkhana Ltd. v/s. State of Mysore & Ors.,* **1969 Lab.I.C. 729,** the Division Bench of the Mysore High Court has taken the view that the Tribunal could not dismiss a Reference on the ground that no evidence was led. It was necessary for the Tribunal to apply its mind and record findings in respect of the dispute referred. A similar view is taken by a learned Single Judge of the Gujarat High Court in the case of *Mohitosh Dass v/s. M.G. Menon & Anr.*, **2004 III CLR 169**. A situation similar to the facts in this case had arisen where the workman had not led any evidence. Besides the pleadings, there was no other material on record. The Gujarat High Court has held that the Reference cannot be dismissed for non-prosecution or in default. Such a procedure cannot be adopted by the

Tribunal since it is expected to make an award once the dispute is referred for adjudication. In these circumstances, the award of the Tribunal is required to be set aside.

6. Mr.Pai, appearing for the Respondents, submits that this Court should not interfere as there is a gross delay in filing of the writ petition. The award was made in 2002. It was published thereafter and that the petitioner has not made out any case for interference.

7. In my view, this submission cannot be accepted in view of the averments in para 10 of the Petition. The Petitioner has explained the delay sufficiently. The award is, therefore, set aside. The parties shall appear before the Tribunal on 28.11.2005. The Tribunal to hear and decide the Reference as expeditiously as possible after giving the parties opportunity to lead evidence in the matter.

6. Office to provide an authenticated copy of this order to the parties. Writ to go down immediately.